Supreme Court, U.S.
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No. 91-663

In The

Supreme Court of the United States

October Term, 1991

SUZANNE CLARK,

Petitioner,

vs.

GEORGE H. CLARK, EXECUTOR,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of Iowa

OPPOSITION OF GEORGE H. CLARK, EXECUTOR, TO PETITION FOR WRIT OF CERTIORARI

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LIST OF PARTIES TO THE ORIGINAL PROCEEDING

In the Matter of the Estate of
Ferne R. Clark,

Deceased,

George Clark, III, Executor

Respondent,

v.

Suzanne Clark,

Petitioner,

MERCHANTS MUTUAL BONDING COMPANY,

Respondent.

TABLE OF CONTENTS

Page

LIST OF PARTIES TO THE PROCEEDING i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 1

SUMMARY OF THE ARGUMENT 5

ARGUMENT 6

CONCLUSION 13

TABLE OF AUTHORITIES

Page

CASES

Avoca State Bank v. Merchants Mutual Bonding Co., 251 N.W.2d 533 (Iowa 1976) 9

Bohle v. Brooks, 225 Iowa 980, 282 N.W. 351 (1938) 9

Conn v. Williams, 353 N.W.2d 411 (Iowa 1984) 9

Duhme v. Duhme, 260 N.W.2d 415 (Iowa 1977) 8

In Re Estate of Chapman, 239 N.W.2d 869 (Iowa 1976) 8

In Re Estate of Ferne R. Clark, 447 N.W.2d 549 (Iowa App. 1989) ..... *passim*

In Re Estate of Wolf, 208 N.W.2d 923 (Iowa 1973) 9

STATUTES

§ 633.385, Code of Iowa 12

STATEMENT OF THE CASE

The Petitioner, Suzanne Clark, has, by omission and exaggeration, misstated the facts of the case.

This case has been through numerous hearings and trials involving two separate appeals to the Supreme Court of Iowa. The first case is entitled *In Re Estate of Ferne R. Clark,* 447 N.W.2d 549 (Iowa App. 1989). The second case, which is subject of the present proceeding, is entitled "In the Matter of the Estate of Ferne R. Clark," which was decided by the Supreme Court of Iowa on July 29, 1991, a copy of which is attached to the Petitioner's Petition for Writ of Certiorari pages A-1 to A-8.

The courts have carefully and thoroughly discussed the issues presented in this case and correctly decided that the Petitioner had no property rights of any kind in either the real estate of the decedent, which was sold under contract to a third party, or the proceeds received from the sale thereof.

The issues of the first case were fully and finally adjudicated and are now the law of the case. (*In Re Estate of Ferne R. Clark,* 447 N.W.2d 549 (Iowa App. 1989))

The present case presents only two issues:

a. Was judgment properly entered upon the supersedeas bond which was required by the district court since Suzanne Clark wished to remain upon the premises during the proceedings of the first appeal? Since the decision of the trial court was affirmed, Suzanne was required to pay fair rental value during the period she resided upon the

premises during the pendency of the first appeal proceeding in the Supreme Court.

b. Was Suzanne Clark entitled to a life estate in the proceeds received from the sale of the real estate in the Ferne Clark estate? In the first case of *In Re Estate of Ferne R. Clark*, 447 N.W.2d 549 (Iowa App. 1989), the Supreme Court determined that Suzanne Clark was not entitled to a life estate in the real estate and she now makes claim to a life estate in the proceeds, which the Supreme Court denied.

These issues in the present case were determined on very basic law and no unusual or unique approach was required to reach the court's decision.

The sequence of events is important to understand the approach and reasoning of the Supreme Court of Iowa.

1. Petitioner, Suzanne Clark, moved into the home of her mother, Ferne R. Clark, in 1974, after the death of the Petitioner's father. While the Petitioner resided with her mother, she paid no rent, but did share some expenses.

2. On March 31, 1981, the decedent, Ferne R. Clark, executed her Last Will and Testament, which contained the following bequest:

III.

I hereby give, devise and bequeath to my daughter, SUZANNE CLARK, the use of my home described as Lot Three (3) of Prather's Addition to Ames, Iowa, for the remainder of her life, or until she no longer desires to

reside therein as her home. During her period of occupancy, my daughter shall have full responsibility for the expenses of maintenance, operation and taxes.

3. On November 11, 1986, the decedent, Ferne R. Clark, granted to her son, George H. Clark III, a plenary Power of Attorney.

4. In November, 1986, George H. Clark III helped arrange for his mother to borrow $10,000.00 in exchange for a mortgage on her home to cover her medical care and expense.

5. The health of the decedent, Ferne R. Clark, deteriorated after November, 1986, and more money was required for her care.

6. Title XIX assistance was required and George H. Clark III applied for such assistance on behalf of his mother. One of the conditions that assistance would be provided was that the home would appraised and placed on the market for sale.

7. This was done and on December 2, 1987, George H. Clark III executed a listing agreement with a real estate broker, as Attorney-in-Fact for his mother, to sell the home. Suzanne Clark admitted in testimony that she knew of no other way to finance her mother's care than to sell the home, as required by the State of Iowa.

8. On January 19, 1988, George H. Clark III entered into a sale agreement, as Attorney-in-Fact for his mother, to sell the home to John and Doris Elliott.

9. The sale agreement between George H. Clark III, as Attorney-in-Fact for his mother, and the Elliotts contained the following condition:

   Cash upon possession – subject to sale of buyer's home located at 1208 Kellogg by February 15, 1988, or this offer shall become null and void.

10. On February 3, 1988, the Elliotts were informed that their home would be purchased by a third party.

11. On February 10, 1988, the Elliotts informed the realtor that they had sold their home and George H. Clark III was informed of this fact prior to February 15, 1988. All parties to the sale agreement considered the condition of the contract of sale to be fully satisfied.

12. The Petitioner, Suzanne Clark, drafted a Power of Attorney, a Deed of Life Tenancy and a Codicil to the Will of Ferne R. Clark, and submitted them to her mother for execution. On February 20, 1988, (22 days after the real estate in question had been conveyed by a real estate contract by George H. Clark III, Attorney-in-Fact for his mother to Elliotts) Ferne R. Clark executed in favor of Suzanne Clark a Power of Attorney and Deed of Life Tenancy of the real estate and, thereafter, executed a Codicil to her Will dated February 25, 1988.

13. The decedent, Ferne R. Clark, died April 21, 1988, her Last Will and Testament and Codicil were admitted to probate and George H. Clark III was appointed as executor on April 26, 1988.

14. On August 23, 1989, the Supreme Court affirmed the judgment of the trial court, holding that Suzanne Clark had no interest of any kind in the real estate which was sold to the third party, Elliotts.

15. No document, testamentary or otherwise, granted Suzanne Clark a life estate in the proceeds from the sale of the real estate.

16. On June 29, 1991, the Supreme Court of Iowa, in the present case, affirmed the trial court finding:

    a. That Suzanne Clark was rightfully required by the trial court to pay from the posted supersedeas bond the fair rental value for possessing the real estate during the pendency of the appeal; and

    b. The life estate in the real estate which was bequeathed to her in the Last Will and Testament of the decedent, Ferne R. Clark, had been adeemed and that the bequest, or any other document, did not give Suzanne Clark a life estate in the proceeds from the sale of the real estate.

SUMMARY OF ARGUMENT

1. That most if not all of the Petitioner's Constitutional objections were raised in the first case of *In Re Estate of Ferne R. Clark*, 447 N.W.2d 549 (Iowa App. 1989), which is now fully concluded.

2. The only issues in the present case are:

   a. Did the trial court properly enter judgment against the Petitioner upon the supersedeas bond which the Petitioner posted in the previous case of *In Re Estate of Ferne R. Clark,* 447 N.W.2d 549 (Iowa App. 1989) so that she could remain in possession of the real estate during the pendency of the prior appeal?

   b. Did the Iowa Court, without violating the Petitioner's Constitutional rights, properly determine that she was not entitled to a life estate in the proceeds from the sale of the real estate after determining in the prior case that the Petitioner was not entitled to a life estate in the real estate?

3. The Iowa Court fully and fairly decided all issues within the Constitutional standards of the Fourteenth Amendment to the United States Constitution.

4. That the Constitutional issue raised by the Petitioner is frivolous.

ARGUMENT

In the initial proceedings before the Court, the Petitioner continued to reside in the home located upon the real estate which is subject to the litigation, claiming a life tenancy ownership by virtue of the Deed of Life Tenancy and/or bequest in the Last Will and Testament of the decedent. These issues were fully discussed and decided against the Petitioner, Suzanne Clark. The final decision was issued by the Court of Appeals of the State of Iowa on the 23rd day of August, 1989. (*In Re Estate of Ferne R.*

Clark, 447 N.W.2d 549 (Iowa App. 1989). No petition for certiorari was made to the Supreme Court of the United States from this decision and the time has long elapsed when such petition could be timely filed under the Rules.

Thereafter, the District Court of Iowa entered a judgment upon the bond which had been filed by the Petitioner, Suzanne Clark, after the judgment was a finality in the previous case (*In Re Estate of Ferne R. Clark*, 447 N.W.2d 549 (Iowa App. 1989)). It was posted so she could continue to reside there during the pendency of the appellate procedures. After the Iowa Court of Appeals sustained the judgment of the lower court, the trial court determined that she owed a fair rental value during the period she resided at the home and assessed judgment against the Petitioner, Suzanne Clark, and Merchants Mutual Bonding Company in the amount of $10,500.00.

In addition, the District Court determined that Suzanne Clark not only did not have a life tenancy interest in the real estate, she also had no interest in the proceeds, either as life tenant or in any other manner. This was determined after the Petitioner was granted full trial and hearing and upon full review before the Supreme Court of Iowa.

The reasoning of the Supreme Court is set forth in its Per Curiam decision set forth in the appendix located at pages A-2 - A-8 of the Petitioner's Petition for Writ of Certiorari.

It is true that the Petitioner has mentioned on many occasions that the determination of the court involved a violation of the Constitutional rights of the Petitioner, but

other than the bare allegations, there was and is no substance to the claim of the Petitioner.

It is clear that the facts of the case do not and did not support a life estate in the proceeds in favor of the Petitioner of the proceeds received from the sale of the real estate.

The Supreme Court of Iowa correctly determined that the decree which was entered in the first case of *In Re Estate of Ferne R. Clark,* 447 N.W.2d 549 (Iowa App. 1989) conclusively established that the Petitioner did not have a life estate in the real estate. There was no evidence that the decedent, Ferne R. Clark, granted a life estate in the proceeds to the Petitioner. The Supreme Court affirmed the District Court and found no life estate in the proceeds and found that the life estate in the property bequeathed to Suzanne was adeemed and, therefore, she had no interest in the proceeds.

The approach and reasoning of the Supreme court is well established in law and supported by authority. Iowa follows the general law that a Last Will and Testament does not become effective until death and until that time, it is ambulatory only and is subject to change and revocation at any time prior to the death of the testator. *Duhme v. Duhme,* 260 N.W.2d 415 (Iowa 1977); *In Re Estate of Chapman,* 239 N.W.2d 869 (Iowa 1976).

The Petitioner has attempted to establish her claim also through a deed of life tenancy which was executed on February 20, 1988, approximately three weeks after the real estate sale contract was executed between the decedent, Ferne R. Clark, through her son as Power of Attorney, and the Elliotts. A deed of life tenancy cannot

operate retroactively. *Bohle v. Brooks*, 225 Iowa 980, 282 N.W. 351 (1938).

The Petitioner, Suzanne Clark, takes considerable space claiming that the Supreme Court misinterpreted the trial court and its own decision in the previous decision. *In Re Estate of Ferne R. Clark*, 447 N.W.2d 549 (Iowa App. 1989). Simply stated, the Petitioner, Suzanne Clark, has taken a statement out of context and misconstrued it to her own interest, which is not a fair and accurate interpretation of either the decision of the trial court or the Supreme Court. The previous appeal is final. After a judgment of a court becomes final, it is the law of the case. *Avoca State Bank v. Merchants Mutual Bonding Co.*, 251 N.W.2d 533, 539 (Iowa 1976).

The phrase relied upon by the Petitioner from the judgment of Judge Seiser of the trial court states:

> The life tenancy deed and the codicil either gave a life estate to Suzanne or ratified the will provisions to that effect.

The Honorable Paul Hellwege, Judge, District Court of Iowa, correctly stated in his decision that this statement was taken out of context and what it really does is:

> . . . Merely expresses what the deed and the will purported to do on their face.

In Iowa, "ademption" occurs when property, either real or personal, which has been specifically devised under a will, is later destroyed or disposed of so it no longer exists as part of the testator's estate at the time of the testator's death. The general rule is that nothing else may be substituted for that which was originally given. *In Re Estate of Wolf*, 208 N.W.2d 923 (Iowa 1973); *Conn v.*

Williams, 353 N.W.2d 411 (Iowa 1984). It has been conclusively determined by the courts that at the time of Ferne R. Clark's death she owned no interest in the real estate and, therefore, could convey no interest therein to the Petitioner, Suzanne Clark. *In Re Estate of Ferne R. Clark*, 447 N.W.2d 549 (Iowa App. 1989).

The last will and testament of Ferne R. Clark is clear and unambiguous on its face. It reads, in part:

> III.
>
> I hereby give, devise and bequeath to my daughter, SUZANNE CLARK, the use of my home, described as Lot Three (3) of Prather's addition to Ames, Iowa, for the remainder of her life, or until she no longer desires to reside therein as her home. During the period of her occupancy, my daughter shall have full responsibility for the expenses of maintenance, operation, and taxes.
>
> IV.
>
> All the rest, residue and remainder of my estate, of every kind or character, wherever situated, I hereby give, devise and bequeath to my children, SHIRLEY C. SMITH, GEORGE H. CLARK III, SUZANNE CLARK, and JUDITH C. KIDDER, share and share alike, the same to be theirs absolutely.

On February 25, 1988, Ferne R. Clark executed a codicil to her will, which read, in part:

> 1 . . . The power and authority granted to my Executor and the judgment and discretion granted to said representative herein shall not be construed nor exercised in such a way as to

> limit or frustrate my intent as expressed in paragraphs 2 and 3 . . .
>
> 3 . . . I further give to my daughter, SUZANNE CLARK, the option to buy my said home, from my Estate or from the other beneficiaries of my Estate, at its appraised fair market value less any debts or liens thereon, said option to be exercised at any time during her life.

It is clear from the express language of the will and codicil that the Petitioner was to receive a life estate in the real estate only. Since the real estate did not exist at the time of the testator's death, there was nothing for Suzanne's life estate to attach.

Suzanne was not to receive a life estate in the proceeds from the sale of the real estate. It is clear from both the will and codicil that the remaining estate of the testator was to be devised to all her children in equal shares. The Supreme Court was correct in determining that the Petitioner, Suzanne Clark, received nothing because at the time of the death of Ferne R. Clark, she owned no interest in the real estate and her will did not give the Petitioner, Suzanne Clark, a life estate in the proceeds from the real estate. All issues have been fully considered by the trial court and now affirmed by the Supreme Court of Iowa. The Petitioner, Suzanne Clark, has been given full due process and it has been fairly and fully determined by the trial court and by the Supreme Court that she had no interest in property.

The cases cited by the Petitioner, Suzanne Clark, are not applicable to the facts or procedures in the instant case. There is no evidence anywhere in the record or any claim that Suzanne Clark did not prevail because she is a

woman. This is simply a last straw claim that has no merit whatsoever which was never raised at any stage of the trial proceedings.

Finally, § 633.385, paragraph 2, Code of Iowa, is not applicable. In order for it to apply, the court would have had to determine that the Petitioner, Suzanne Clark, had an interest in the real estate. This was decided against her in the previous case and no certiorari from that decision was taken to this court and it is the law of the case.

Much of the Petition for Certiorari devotes time and space to the issues of the previous case, which is now fully concluded and is the law of the case. No petition for certiorari was taken from the decision of the prior case and, therefore, there is nothing to review. The only matters at issue before this court are:

1. Did the court properly enter judgment upon the supersedeas bond?

2. Did the Petitioner have an interest in the proceeds received from the sale of the real estate?

Since it was conclusively determined that she had no interest in the real estate, she clearly could have no interest in the proceeds unless she was given a life estate interest by deed or other document, and no such document or deed was presented. This case does not involve matters of special or important interest involving any violation to the Petitioner's Constitutional rights and the Petition for Certiorari should be denied.

CONCLUSION

That the Petition of the Petitioner for writ of certiorari should be denied.

Respectfully submitted,

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